


Exhibit 14: AFA Attorney's written defense of AFA's actions

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July 24, 2009

To: Jamee Jordan Patterson, Esq.
Fax No: (619) 645-2012
From: David Weinsoff, Esq. 
Re: Response to AG's Demand Letter

Message:

Pages (including cover page): 5

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DAVID J. WEINSOFF, ESQ.

BY FACSIMILE AND U.S. MAIL

July 24, 2009

Jamee Jordan Patterson, Esq.
Supervising Deputy Attorney General
California Department of Justice
110 West "A" Street / Suite 1100
San Diego, California 92101

Re: *Attorney General's Demand Letter of July 14, 2009*

Dear Jamee,

This letter is in response to your formal correspondence of July 14, 2009. After 8 years of work in managing 35 vertical and lateral easements in close and successful collaboration with both Coastal Commission and Coastal Conservancy staffs, there appears to be a surprising and unfounded lack of faith and belief that Access for All (AFA) is being true to its singular mission to enhance public access for the people of California. Years of work as colleagues are replaced in your letter by extremely serious threats to the work AFA undertakes and performs consistent with the public access provisions in the California Coastal Act. The bases upon which you assert them, however, are entirely wrong.

Two errors in particular require immediate review and reconsideration:

1. AFA Does Not Advocate Terminating/Extinguishing the Ackerberg Easement

Your letter states that the stipulated judgment entered into by AFA and Mrs. Ackerberg and approved by Judge Treu "provides that the parties would seek to terminate or extinguish [the] vertical public access easement on Mrs. Ackerberg's property." The suggestion is that AFA by mere application (and made only after the opening of the up-coast LA County easement) intends to advocate terminating/extinguishing the Ackerberg easement, and that by asking the Commission to rule in its sole discretion on this issue, AFA would be acting "contrary to the interests of the public" and in violation of the "public trust." This interpretation of the AFA/Ackerberg stipulated judgment and settlement agreement is at odds with a careful reading of the plain language of both documents.

Three paragraphs in the settlement agreement apply directly. Paragraph 4.1 (titled "Extinguishment of the Ackerberg Easement and Payment of Funds to Maintain the County's Accessway") and Paragraph 5.1 (titled "Enforcement of the Ackerberg Easement") are carefully linked by Paragraph 10 (titled "Duty to Cooperate") and must be read and interpreted together.

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Paragraph 4.1(b) provides that AFA and Ackerberg "will jointly apply to the Coastal Commission to amend [the Ackerberg CDP] to terminate or extinguish the Ackerberg easement." Paragraph 5.1(a) requires that the parties will "jointly apply to the Coastal Commission to amend [the Ackerberg CDP] to improve the Ackerberg easement and to modify the approved [Management Plan] ... to include [recommended] security measures ..." While both paragraphs direct AFA and Ackerberg to make a "joint application" to the Commission to amend the Ackerberg CDP, it is important to look closely at Paragraph 10, which specifically directs when and for which CDP amendment AFA must advocate.

Paragraph 10 ("Duty to Cooperate") states that "[t]he parties agree to support, both orally and in writing, the terms and conditions set forth in this Agreement in any judicial proceeding or any administrative proceeding referred to in Paragraph 5" (emphasis added). Paragraph 5 ("Enforcement of the Ackerberg Easement") only addresses the process and procedures for seeking approval from the Commission to implement amendments to the July, 2003 "Management Plan." As discussed further below, Phase II of the Management Plan specifically requires AFA to "work with the property owner to design" the improvements necessary to operate the [Ackerberg] easement. Paragraph 5 was included in the settlement agreement to ensure the smooth and effective implementation of Phase II of the Management Plan, incorporating the specific improvements that Mrs. Ackerberg wants to include, with her private funds, in the public accessway.

In limiting its "Duty to Cooperate" to the provisions in Paragraph 5, AFA has made it clear to Mrs. Ackerberg that it will not advocate for the termination/extinguishment of the Ackerberg easement. Therefore, in the event the County-owned accessway is opened, Mrs. Ackerberg on her own will argue to the Commission that her vertical easement should be terminated/extinguished. AFA's role in any permit amendment would only be to ensure, as the easement holder, that Mrs. Ackerberg has the opportunity under the Coastal Act to make her application and arguments for a CDP amendment. The Commission, in its sole discretion and without any advocacy from AFA, will decide the fate of the Ackerberg easement.

2. AFA's Actions Have Been and Continue to Be Consistent With the Certificate of Acceptance and the Management Plan

AFA wants to assure you that it is ready, willing, and able to "carry out its responsibilities" under the "Management Plan" as required under the December, 2003 "Certificate of Acceptance," and remains in the process of doing so. AFA has violated none of the terms and conditions of either the Certificate of Acceptance or the Management Plan.

The terms of the Management Plan are clear:

Phase I required AFA to "hire a surveyor to locate the boundaries of the easement and identify encroachments within the easement area." This was completed in October 2005. *Phase I* also required AFA to submit a list of the encroachments identified by the surveyor to Commission staff "for review and action." This was completed in December 2005.

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Phase II requires AFA to open the easement "once the issue of encroachments has been resolved" and to "work with the property owner [Mrs. Lisette Ackerberg] to design" the improvements necessary to operate the easement in consultation with Commission and Coastal Conservancy staffs. The issue of "encroachments" was discussed and decided by the Commission on July 8, 2009 and at the resolution of the Commission's enforcement actions titled Cease and Desist Order No. CCC-09-CD-01 and Notice of Violation No. CCC-09-NOV-01, AFA will take action under the Management Plan to open the accessway. To that end, paragraph 5.1 of the settlement agreement includes a comprehensive set of "design" improvements acceptable to Mrs. Ackerberg and AFA, completing this requirement in Phase II of the Management Plan as well. And, it is important to note, that at a time when public funding for public access is in short supply, Mrs. Ackerberg has agreed to fully fund the considerable additional improvements identified in the settlement agreement.

Last December the Coastal Conservancy authorized a grant of \$75,000 to AFA to prepare and finalize site designs and undertake other analysis needed to apply for the necessary permits required to develop three accessways, one of which is the Ackerberg easement. Unfortunately, as we are all aware, the bond funds to accomplish this are not yet available and remain up in the air pending resolution of the State budget crisis. Nonetheless, AFA remains prepared to work with the Conservancy now and when the funds are disbursed to complete the site designs for this easement and to obtain the required permits to develop it.

Finally, because there appears to be some confusion about AFA's position in this matter, let me say on the record that AFA's commitment to opening the Ackerberg easement remains strong and unwavering. AFA has relinquished none of its rights, and surely has not attempted to relinquish any of those owned by the State. The Coastal Commission retains the last word on the implementation of the Ackerberg easement.

What AFA has done is to take an innovative approach (consistent with Public Resources Code § 30214(c)) to opening up the Ackerberg easement (unopened since 1985) and the County of Los Angeles easement five properties up-coast (unopened since 1973). Under the settlement agreement, AFA has initiated a process that will result in the opening and operation of new public access to Carbon Beach and that this new public access will be opened expeditiously and managed with private funds as guaranteed under the settlement agreement. Suffice it to state, this eliminates the need for public funding from the Coastal Conservancy for this purpose, and permits the Conservancy to allocate its valuable funds to other critical access and coastal-related uses.

I hope this letter clarifies AFA's role with respect to the Ackerberg easement. As has always been the case through the many years of successful projects on which AFA and the Commission and Conservancy have worked together, AFA remains available at your convenience to discuss this matter further without recourse to the courts and further public hearings as suggested in your letter.

Very truly yours,

David Weinsoff

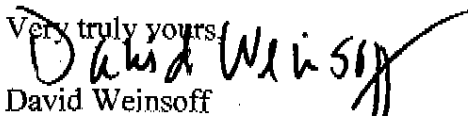


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c: Steve Hoye, Executive Director / AFA
Steve Kaufmann, Esq.
Diane Abbitt, Esq.
Glen Alex, Esq. / California Coastal Conservancy
Alex Helperin, Esq. / California Coastal Commission